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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/759,935	01/12/2001	Jay B. Schiller	FSP0181	2760

7590 02/09/2007
Attn: Charles A Mirho
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EXAMINER

BROWN, RUEBEN M

ART UNIT PAPER NUMBER

2623

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/09/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	09/759,935	SCHILLER ET AL.	
	Examiner	Art Unit	
	Reuben M. Brown	2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 17 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114 was filed in this application after appeal to the Board of Patent Appeals and Interferences, but prior to a decision on the appeal. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 11/17/2006 has been entered.

Response to Arguments

2. Applicant's arguments filed 11/17/2006 have been fully considered but they are not persuasive. In response to examiner's assertion in the Examiner's Answer, mailed 9/7/2006, applicant asserts that the 'adapted to' phrases recited throughout the claims, correspond with the "whereby" clause as understood and addressed by the court's holding in *Hoffer v. Microsoft* and discussed in MPEP 2111.04. Examiner respectfully disagrees and points out that MPEP 2114 was cited as providing the relevant language regarding the phrase. In particular, MPEP 2114 states, 'A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art teaches all of the structural limitations of the claim.', emphasis added.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 22-33 are rejected under 35 U.S.C. 102(e) as being anticipated by Son, (U.S. Pat # 6,697,376).

Considering claim 22, the claimed 'VOD system, comprising a headend adapted to address communications comprising an identification of a group of subscriber terminals to all terminals of the group, so that the communication of the identification of the group is not addressed to any one particular terminal of the group, and the identification may be accessed and read by all of the terminals of the group', is met by the disclosure of Son, that the Logical Node ID generator 102 generates a Logical Node ID, which is inserted into the data stream to be transmitted over the network 108 to all of the relevant subscriber stations, (Fig. 1; Fig. 2b; Fig. 3; Fig. 4; col. 7, lines 45-62; col. 8, lines 1-35; col. 9, lines 17-25; col. 9, lines 29-40).

The headend further adapted to receive a request for a VOD including the group identifier and to enable one or more modulators associated with the group identifier to pass the VOD

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downstream, is met by the disclosure in Son that the subscriber stations include the Logical Node ID in their VOD request, and the headend transmits the requested VOD over the appropriate modulator 106 (col. 4, lines 57-67; col. 5, lines 45-67; col. 9, lines 25-30).

Considering claims 23 & 27, see col. 2, lines 39-67; col. 4, lines 40-56; col. 8, lines 50-67.

Considering claims 24 & 28, Son teaches that the Logical Node ID may be periodically transmitted to the subscriber stations, (col. 8, lines 23-28; col. 9, lines 52-57).

Considering claims 25 & 29, Son teaches that the Logical Node ID may be sent as an MPEG stream, col. 8, lines 20-35.

Considering claims 26 & 30, the claimed elements of a VOD system that correspond with subject matter mentioned above in the rejection of claim 22 are likewise treated. As for the claimed feature of 'a video server and an application server', the 'video server' reads on the operation of the video server 104b, Logical Node ID generator 102b, DVM 106b (Fig. 2B; col. 5, lines 45-67 thru col. 6, lines 1-33.). The 'application server' reads on the operation of the SSCM 314 at the headend, (Fig. 1; Figs. 2A; 2B; Fig. 3; col. 4, lines 52-67; col. 6, lines 45-67; col. 9, lines 25-29).

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Considering claim 31, Son teaches transmission of Logical Node ID using out-of-band process, col. 7, lines 1-32.

Considering claim 32, the subscriber station of Son, meets all subject matter, (col. 6, lines 31-67; col. 9, lines 1-50).

Considering claim 33, see col. 2, lines 55-67; col. 7, lines 1-30 & col. 9, lines 50-67.

Any response to this action should be mailed to:

Commissioner for Patents

Art Unit: 2623

P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

or faxed to:

(571) 273-8300, (for formal communications intended for entry)

Or:

(571) 273-7290 (for informal or draft communications, please label
"PROPOSED" or "DRAFT")

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reuben M. Brown whose telephone number is (571) 272-7290. The examiner can normally be reached on M-F (9:00-6:00), First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Kelley can be reached on (571) 272-7331. The fax phone numbers for the organization where this application or proceeding is assigned is (571) 273-8300 for regular communications and After Final communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Reuben M. Brown


REUBEN M. BROWN
PATENT EXAMINER